

81-471

LANDSCAPE MAINTENANCE AGREEMENT

A.G. CONTRACT NO. 81-471

MILL AVENUE STREETSCAPE

(University Drive - First Street)

THIS AGREEMENT, made this 31<sup>st</sup> day of August, 1981, pursuant to A.R.S. Sec. 11-951 through Sec. 11-954, by and between the Department of Transportation, Highways Division, an agency of the State of Arizona, thereunto duly authorized, hereinafter designated Department of Transportation and the City of Tempe, a municipal corporation, thereunto duly authorized, hereinafter designated as City.

WITNESSETH:

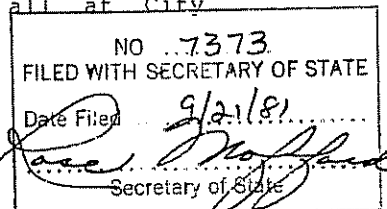
WHEREAS, it is to the mutual advantage of the Department of Transportation and the City to landscape certain areas within the right-of-way on State Route 60 (Mill Avenue) from First Street, approximate Roadway Station 3+83 to University Drive, approximate Roadway Station 35+34, a net distance of approximately 0.53 miles.

NOW THEREFORE, it is hereby mutually agreed by and between the Department of Transportation and the City, pursuant to the authority contained in A.R.S. Sec. 28-108, as follows:

1. The City will prepare plans for the landscaping and irrigation project and submit them to the Department of Transportation for approval.

2. Upon approval, the project will be constructed by the City.

3. The City shall furnish all water and electrical power during construction phase, and all water and electrical power hereafter necessary to properly maintain the landscape between the right-of-way lines from First Street, approximate Roadway Station 3+83 to University Drive, approximate Roadway Station 35+34, all at City expense.



4. The City shall maintain the landscaping and irrigation system within the right-of-way from First Street, approximate Roadway Station 3+83 to University Drive, approximate Roadway Station 35+34, all at City expense.

5. The City hereby agrees to maintain the landscaping and irrigation system as it was designed and approved by the Department of Transportation and the City will not make any changes, additions or deletions without written approval by the Department of Transportation.

6. The City hereby agrees to save and hold harmless the Department of Transportation, or any of its departments, agencies, officers or employees from all cost and damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by an activity, condition, or event arising out of the performance or non-performance of any provision of this agreement by the City, any of its agents, or any of its independent contractors. The above cost incurred by the Department of Transportation or any of its departments, agencies or employees shall include in the event of an action, court costs, expenses of litigation and reasonable attorneys' fees. When any above cost, damage or other damage occurs as aforesaid, the City assumes the burden of proof that the activity, condition, or event did not cause such cost, damage or other damage.

7. This agreement shall be filed with the Secretary of State and shall become effective on the date of such filing.

8. Attached hereto are resolutions of the Department of Transportation and the City authorizing both entities to enter into this agreement, and a written determination by the City Attorney of Tempe that this agreement is in proper form and within the powers and authority granted to the City under the laws of this State.


9. The effective date of this agreement shall be upon filing with the Secretary of State and shall remain in full force and effect for a period of five (5) years from the effective date unless terminated earlier by mutual consent of the parties hereto or unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless the parties hereto mutually agree by formal amendment reflected herein to this agreement not less than one (1) month prior to the initial or renewed expiration date.

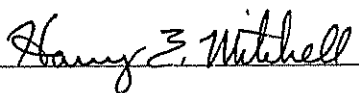
10. All parties are hereby put on notice that this Contract (Agreement) is subject to cancellation by the Governor, pursuant to Arizona Revised Statutes, Section 38-511.

IN WITNESS WHEREOF the parties have executed two copies of this agreement on the day and year herein written.

ARIZONA DEPARTMENT OF  
TRANSPORTATION


CITY OF TEMPE

By   
Chief Deputy State Engineer

By 

RESOLUTION

Be it resolved on this date, August 31, 1981, I, WILLIAM A. ORDWAY, the below undersigned Director, Department of Transportation, have determined that it is to be to the advantage of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, and the CITY OF TEMPE, acting by and through its CITY COUNCIL enter into the intergovernmental agency agreement for the purpose of entering in a landscape maintenance agreement for certain projects which have been determined by the State and subject to the approval of the City of Tempe as by law required; and request the City to perform certain work and supply necessary materials required to maintain the specified areas in the manner specified in the attached agreement.

  
WILLIAM A. ORDWAY, Director  
Department of Transportation

APPROVAL OF THE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, STATE ENGINEER and the CITY OF TEMPE and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 15<sup>th</sup> day of July,  
1981.

DAVID R. MERKEL  
The City Attorney

*C. Brad Woodford*  
*acting City Attorney*

STATE OF ARIZONA       )  
                                  :   SS  
County of Maricopa     )

I, Pauline S. Templeton, City Clerk  
of the City of Tempe, Arizona, do hereby certify that the  
following is a true and correct extract of the minutes of  
the City Council meeting held on July 16, 1981 :

In Witness Whereof, I have hereunto set my hand  
and affixed the Official Seal of the City of Tempe, Arizona.  
Done in Tempe, Arizona this 22nd day of  
July, 1981.

Pauline S. Templeton

- (13) Auth to Execute Landscape Maintenance Agreement with  
Arizona Department of Transportation for Mill Avenue  
Streetscape, Project #80041  
Councilman Ream moved that the City Council authorize  
the Mayor to execute a landscape maintenance agreement  
with the Arizona Department of Transportation for the  
Mill Avenue Streetscape, Project #80041; Councilman  
Phillips seconded; roll call vote 6-0; Vice-Mayor  
Sears being absent during roll call.



OFFICE OF THE  
**Attorney General**

1801 WEST JEFFERSON STREET  
FOURTH FLOOR  
PHOENIX, ARIZONA 85007

ROBERT K. CORBIN  
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 81-471, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted to the State or its agencies under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 13 day of August, 1981.

ROBERT K. CORBIN  
Attorney General

*Joe Acosta, Jr.*  
Assistant Attorney General  
Transportation Division